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April 11, 2001

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

RECEIVED

APR 11 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Presentation: Access Charge Reform, CC Docket No. 96-262; Request for Emergency Relief of the Minnesota CLEC Consortium and the Rural Independent Competitive alliance, DA-1067; Mandatory Detariffing of CLEC Interstate Access Services, DA 00-1268; Inter-Carrier Compensation for ISP Bound Traffic, CC Docket No. 99-68. /

Dear Ms. Salas:

Today, I sent the attached letter to Mr. Jeff Dygert, Deputy Chief of the Common Carrier Bureau. Please include a copy of this letter in the above referenced proceedings.

I have submitted an original and one copy of this Notice in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature, likely of Patrick H. Merrick, in dark ink.

Attachment

cc: Jeff Dygert



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Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Access Charge Reform, CC Docket No. 96-262; Request for  
Emergency Relief of the Minnesota CLEC Consortium and the Rural  
Independent Competitive alliance, DA-1067; Mandatory Detariffing of  
CLEC Interstate Access Services, DA 00-1268.

Dear Mr. Dygert:

Various carriers in this proceeding have proposed exempting CLECs operating in "rural" geographic areas from mandatory detariffing obligations. For the reasons set forth in detail in the record of this proceeding, there is no economic, legal, or public policy justification for creating any exclusion from mandatory detariffing for "rural" CLECs. Moreover, the proposals offered by other carriers in this proceeding are fatally flawed, extremely open-ended, and invite widespread uneconomic competitive entry and continued abuse by CLECs. In particular, they fail narrowly to address the asserted concerns that have been raised. While AT&T considers these concerns unfounded, they would be more than fully addressed by an exception limited to CLECs meeting the following criteria.

1. The CLEC must operate exclusively in rural areas, defined as areas outside Metropolitan Statistical Areas (as defined by the U.S. Census Bureau), and may not avoid this limitation by creating separate affiliates to operate in different areas;
2. The CLEC must be competing against an ILEC that has not claimed rural status for universal service support purposes, and that does not have de-averaged or tiered pricing for switched access services;
3. All the CLEC's end-user customers must be located within the rural area for which the CLEC is seeking the exemption;

4. The CLEC must not engage in revenue sharing involving access charges with any end-user customer or any other party;
5. The access minutes of use billed by the CLEC to all IXC's in each state must not exceed 100,000 minutes of use per month;<sup>1</sup>
6. The CLEC must have commenced operations exclusively in rural areas on or before the adopted date of any regulation creating an exception for rural CLEC's;
7. The percent of traffic for which the CLEC bills access charges that is 8YY, toll-free traffic must not exceed 25% of the originating minutes;<sup>2</sup>
8. The CLEC cannot engage in any form of cross-subsidy as it relates to the local and other services it offers, for example charging less for local service (considering all charges, including SLC and features) than the ILEC for the similar local service;
9. The CLEC must not be operating in a territory in which explicit federal or state universal service support mechanisms are available to carriers that meet the eligibility criteria for such a territory, regardless of whether the CLEC meets the eligibility criteria to receive universal service support;
10. The CLEC must impute its access rate to its own long distance offerings;
11. The CLEC must provide local exchange service over its own switch and loop facilities, not those leased from another local exchange carrier or third party; and
12. The CLEC's switches must be used to provide service exclusively to the CLEC's customers in that rural area and not customers of any other carrier, including the CLEC's corporate parent, subsidiary, or affiliate.

In addition, the proposals that have been offered in this proceeding would permit the tariffing of wildly excessive rates. While any rate in excess of costs is unwarranted and invites the potential for abuse, nothing in the record of this

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<sup>1</sup> Of the CLEC's billing AT&T directly, over 35% are billing AT&T less than 100,000 minutes of use (MOUs) per month. Using a MOU threshold is the easiest criteria to administer and it will limit a "rural" CLEC's ability to engage in abusive practices, such as 8YY traffic aggregation. Such a traffic volume limitation will not penalize truly rural CLEC's.

<sup>2</sup> As set forth in prior AT&T ex partes, the rate for switched access services arising from 8YY calls should be no higher than the ILEC rate, even if a CLEC meets the criteria for rural status. The percentage of 8YY traffic should merely be one of the criteria for determining if a CLEC qualifies for rural status. If a large proportion of a CLEC's originating traffic is 8YY traffic, such a CLEC is deliberately limiting the scope of its service and cannot legitimately claim to be serving a rural area.

proceeding even remotely could warrant the tariffing by a "rural" CLEC of charges greater than the lowest of (a) the lowest (e.g., zone/tier 1) of the then-current NECA rates, (b) two times the then-current ILEC rate in the rural area, and (c) the CLEC's rates in effect as of September 1, 2000 (or any lower rates charged by the CLEC after that date). Even then, nothing could justify the extension of such tariffing authority for more than 12 months, after which the "rural" CLEC should be permitted to tariff access rates no more than 50% of this level for no more than an additional 12 months. At the end of that period, "rural" CLECs should, if at all, be permitted to tariff rates no greater than the ILEC rates.

Moreover, under no circumstances should the tariffing of rates oblige any carrier to purchase access services from a CLEC. In addition to concerns with access prices, long distance carriers must be free to negotiate non-pricing terms and conditions under which they will purchase switched access services and to refuse to purchase switched access services from CLECs with whom they are unable to reach a satisfactory mutual agreement. These include terms related to capacity to the ILEC tandem and other quality of service issues, billing arrangements, the provision by CLECs to IXCs of customer billing name and address information, liability limitations, and restrictions on the manner in which the access provider describes the access purchaser and its services. Proposals for a "rural" CLEC exemption from mandatory detariffing have also failed to address these issues.

Sincerely,

A handwritten signature, likely of Kyle Dixon, in dark ink. The signature is stylized and appears to be a first name followed by a last name.

cc: Kyle Dixon  
Ben Golant  
Jordan Goldstein  
Sarah Whitesell